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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 96

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

v.

ESTATE OF FRANCOIS L. CHURCH, Deceased,
EDWARD E. BLACK, Executor,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT

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OPINIONS BELOW

The memorandum opinion of the Tax Court (R. 7-10) is not officially reported. The opinion of the Circuit Court of Appeals and the dissenting opinion of one judge (R. 17-22) are reported at 161 F. 2d 11.

JURISDICTION

Petitioner invoked the jurisdiction of this Court under section 240(a) of the Judicial Code. The case is here by writ of certiorari granted by this Court on June 16, 1947.

STATEMENT

The statement contained in petitioner's brief is accurate. The following, however, are additional facts not therein set forth:

When, in March, 1924 E. Dwight Church, an older half brother, had the conference with decedent in which he suggested that decedent place the stock in trust in order to safeguard it, the decedent thereupon offered to give the stock to E. Dwight Church (R. 4). E. Dwight Church refused and sent him to the family attorney to have the stock placed in trust (R. 4). When decedent went to the family attorney to have the trust instrument drawn, he told the attorney that his purpose was to avoid any chance that he might dissipate the stock (p. 33, typewritten transcript of record).*

Decedent died at the age of 37 without issue (R. 3, 7, 8). There survived him sixteen persons who were brothers and sisters of the half blood and full blood or the children of such brothers and sisters (R. 3, 14). Of these sixteen people, ten were younger than decedent (R. 14). At the time of decedent's death the corpus of the trust was worth $188,800 (see p. 2 of statement attached to ninety-day letter in typewritten transcript). If there existed any possibility of reversion to decedent or his estate by operation of law on the date of decedent's death the actuarial value of such possibility was less than three ten-thousandths of one cent ($.000003-) (R. 12-13).

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*Stipulation filed with this Court provides that either party may refer in brief to any portion of the transcript of record which is not included in the printed record.

The Tax Court held that the gift in trust was not made in contemplation of death (R. 9), that "the grantor during his lifetime disposed of his interests in the corpus of the trust as well as any man could" (R. 9-10), and that the gift was not one intended to take effect in possession or enjoyment at or after death (R. 10).

STATUTE INVOLVED

Internal Revenue Code:

SEC. 811. GROSS ESTATE.

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

* * * * *

(c) *Transfers in contemplation of, or taking effect at death.*—To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, * * * except in case of a bona fide sale for an adequate and full consideration in money or money's worth. * * *

* * * * *

(26 U. S. C. (1940 ed.) Sec. 811.)

SUMMARY OF ARGUMENT

1. There was no possibility that the settlor or his estate would come into possession or enjoyment of the corpus of the trust. Construction of the trust is governed by the laws of New York. The trust does not contain any express condition that the children of brothers and sisters of the settlor must survive the settlor in order to become entitled to the corpus if all the other conditions are fulfilled. Under the New York decisions, involving both testamentary and *inter vivos* trusts, a condition of survivorship will not be implied even though prior gifts in the same instrument contain express conditions of survivorship. Moreover, if there be any ambiguity in the instrument it may, under the law of New York, be resolved by resort to extrinsic circumstances. The fact that the motive in placing the stock in trust was to prevent the decedent from ever being able to dispose of it to persons outside the family circle dictates a construction which would prevent any possibility of reversion.

2. Granting, but for the sake of argument only, that there is a possibility of reversion, it is so infinitesimal that it should be ignored. Taxation is a practical thing. A reversion that is worth less than three ten-thousandths of one cent is no reversion at all. For practical purposes it does not exist. Every word of a statute should be accorded a meaning if possible. If the word "intended", as used in the statute, is to be accorded any meaning, it must mean that where the impliedly reserved interest is so remote that an ordinary man would not consider that it existed there is no intent to postpone the complete disposition of the corpus.

3. Under the rule of *Dobson* v. *Commissioner*, the decision of the Tax Court should be affirmed. Its findings of fact are supported by substantial evidence and are not contested by petitioner. The conclusion of law—that the decedent disposed of his interest in the corpus as well as any man could—is a correct interpretation of New York law, as demonstrated in Point 1. Even if there were a remote possibility of reversion, it is a correct interpretation of section 811(c) of the Internal Revenue Code, as demonstrated in Point 2. Petitioner has failed to show that the Tax Court has made a clear-cut mistake of law.

ARGUMENT

POINT 1

THERE WAS NO POSSIBILITY THAT THE DECEDENT OR HIS ESTATE WOULD COME INTO POSSESSION OR ENJOYMENT OF THE CORPUS OF THE TRUST.

As conceded by petitioner (Brief, p. 5), construction of the indenture is governed by the laws of New York. The settlor was a resident of New York when he created the trust (R. 8); all three trustees were residents of New York (R. 8); the trust corpus consisted of stock certificates which were physically located in New York (R. 8); the indenture was drawn in New York by a New York lawyer (see pp. 32-33, typewritten transcript of record); the indenture was executed, and the stock was delivered, to the trustees in New York (R. 8); and the instrument contains not the slightest suggestion that the settlor intended it to be construed under the laws of any other jurisdiction (R. 4-6).

In the ensuing examination of the New York authorities, it is necessary to bear in mind two undisputed facts, either of which, as will be demonstrated, is in itself sufficient to sustain respondent's contention. First, that although the deed of trust expressly makes survival of the settlor one of the conditions precedent to the enjoyment of the corpus by the brothers and sisters of the settlor, it does not expressly make a like survival by the children of a deceased brother or sister a condition precedent to the enjoyment of the corpus by such children (R. 5); and second, that the purpose of establishing the trust as found, on undisputed evidence (R. 3; see also p. 33, typewritten transcript) by the Tax Court, (R. 8) was the fear "that decedent, as a result of his improvidence, might dispose of the 1,000 shares of Church & Dwight stock to persons outside the family circle".

(a) The instrument itself permits no possibility of a reversion.

The pertinent clause of the indenture reads as follows (R. 5):

> "In the event that the Settlor should die leaving no lawful issue him surviving then and in that event the trustees are ordered and directed to transfer and pay over the principal amount of said trust estate with all increase thereof as it shall then exist in equal shares to the brothers and sisters of the Settlor then surviving, any child or children of a deceased brother or sister to take the share per stirpes which their parent would have been entitled to receive if living."

Mr. Church expressly gave the corpus to his surviving issue. In default of surviving issue, he expressly gave it

to his surviving brothers and sisters. He next gave it to "any child or children of a deceased brother or sister." Since children of brothers and sisters were *in esse*, it is clear that unless the gift to such children was conditioned upon their survivorship of Mr. Church there could be no reversion, for the dispositions would then be complete. Consequently, petitioner is asking this Court to imply a condition of survivorship in the gifts to the children which would be identical to the expressed condition of survivorship in the gifts to issue and to brothers and sisters. Such an implication is contrary to a well-established rule of construction in the State of New York. In *Fulton Trust Co. v. Phillips*, 218 N. Y. 573 (1916), the court said (p. 581):

> "The absence of a gift over in the alternative and of any words of survivorship in this connection has a special significance arising from the fact that in other provisions of the will where the testatrix desired to provide for survivorship she used apt words expressive of such a purpose."

No such implication of survivorship was permissible under the English common law.* It is certainly not per-

*2 Jarman on Wills (6th Ed., 1893) 199-200 says:

"* * * it is now settled that children are not by implication required to survive the period of distribution as expressed with regard to their parents in whose place they stand, whether the gift to the issue be original—as where it is to such of a class of legatees as survive the period of distribution, and the issue of such as are then dead—or strictly substitutional, *i.e.* divesting a previous vested gift to the parent. And though the child dies before its parent, it will still be entitled, if the gift to it be original; but not, it seems, if the gift be substitutional."

Church's gift over to the children of his brothers and sisters was original under Jarman's definition since the brothers and

missible in New York since the Revised Statutes of 1830 which made the rules as to future estates apply to wills and deeds alike and notably expanded the scope of the common law rule in favor of the early vesting of future estates. *Moore* v. *Littel*, 41 N. Y. 66, 78 (1869); Gray, *The Rule Against Perpetuities* (4th Ed. 1942) 92-94; Fowler, *The Real Property Law of the State of New York* (3rd Ed. 1909) 51-53.* The common law distinction between vested and contingent remainders was substantially altered in favor of a vested interpretation (now § 40, New York Real Property Law); and future estates, whether vested or contingent, became descendible, devisable and alienable in the same manner as estates in possession (now § 59, New York Real Property Law).** These statutes not only strengthened and sustained the policy of the law which had long favored the holding of estates vested rather than contingent (*cf. Moore* v. *Littel, supra*, p. 79) but they also created an unwillingness of the courts of New York to hold an estate subject to divestment by implying a condition which was not expressed. As a result, the decisions in New York since the revision of 1830 hold that dispositions analogous to the one here

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sisters had to survive the period of distribution. Hence these children or their legal representatives would take the remainder under the final alternative even if they predeceased their parent. An early New York case on this exact point so held. *Wright* v. *Dugan*, 34 Hun 634, 15 Abb. N. C. 107 (1885).

*By Section 11 of the New York Personal Property Law (see appendix) "limitations of future or contingent interests in personal property are subject to the rules prescribed in relation to future estates in real property". Even in cases not covered by statute the courts generally assimilate the two. *National Park Bank* v. *Billings*, 144 App. Div. 536, 541, aff'd 203 N. Y. 556 (1911); *Stringer* v. *Young*, 191 N. Y. 157, 162 (1908).

**See appendix.

under consideration are not to be construed so as to imply survivorship conditions. *Hennessy v. Patterson*, 85 N. Y. 91 (1881) (testamentary disposition); *Wright v. Dugan*, 34 Hun 634 (case No. 12), 15 Abb. N. C. 107 (1885) (testamentary trust); *Matter of Bowers*, 195 App. Div. 548, aff'd 231 N. Y. 613 (1921) (*inter vivos* trust); *Matter of Schaefer*, 160 Misc. 43 (Surr. Ct., N. Y. Co., 1936) (testamentary trust); *Matter of Stephani*, 161 Misc. 803, aff'd 253 App. Div. 705 (1937) (testamentary trust); *Matter of McCombs*, 261 App. Div. 449, aff'd 287 N. Y. 557 (1941) (testamentary trust); *Matter of Elting*, 268 App. Div. 74, aff'd 294 N. Y. 941 (1945) (testamentary trust).

In *Matter of Elting*, 268 App. Div. 74, *supra*, the testatrix established a trust for her husband for life, then for her son, Clarence, for life, with remainder to the children of Clarence surviving him, and in default of such surviving children "to the children of my nephew Abraham * * * and the children of my niece, Mary * * * share and share alike". Clarence died without issue. Abraham's children predeceased Clarence but the children of Mary survived Clarence. The question was whether the children of Abraham took half the remainder or whether survivorship was an implied condition precedent so that the entire corpus would go to the children of Mary. The court refused to imply a condition of survivorship and held that the children of Abraham had taken remainders "subject only to being divested by the death of the son [Clarence] of the testatrix with issue him surviving and to modification by being opened to let in to share after-born children of said niece or said nephew".

The similarity of the dispositions in the *Elting* case to the one here under consideration is obvious. The primary

remainders in both instances are expressly conditioned on survivorship of the life tenant. The secondary remainder in the *Elting* case and the tertiary in the instant case were not expressly conditioned upon survivorship.

In *Matter of McCombs*, 261 App. Div. 449, *supra*, the testator left real and personal property in trust to his widow Phoebe for life, remainder to his sons Wilton and Harry, but provided (p. 451):

> "Should either of my said sons die before my said wife, leaving no issue him surviving, then and in that case I give, devise and bequeath said deceased son's share in my property hereby devised or bequeathed to the survivor".

When the testator died he was survived only by his widow and son Harry. Wilton had left no issue. Harry died before the life estate terminated and the question was whether his failure to survive the life tenant deprived him of his interest in the remainder. The court held that the condition of survivorship applied only to whichever of the sons died first and refused to imply a condition of survivorship to Harry's remainder, saying (p. 451):

> "The effect of the ninth paragraph is not to convert these vested remainders into contingent remainders, but to render them subject to divestment as to one son in the event that he failed to survive the other during the lifetime of their mother, leaving no issue. At the same time it served to give to each son an alternate vested remainder in such of the specific realty as to which the other was the primary remainderman, subject to divestment in the event that such other son survived their mother or the alternate remainderman during the lifetime of their mother, or died leaving issue."

It is particularly significant that the result was reached in the face of the fact that an intestacy would have resulted in giving the corpus to a blood descendant of the testator,—namely, the daughter of his deceased daughter.

Hennessy v. *Patterson*, 85 N. Y. 91, *supra*, is a leading case in New York on the subject. The will was crudely drawn but the testator gave his widow a life estate in real property, with remainder to any "children" of his daughter Margaret "living after her death", but if Margaret died "without leaving any issue" then to his nephew John Foley. The testator died in 1872, his widow in 1874, Foley in 1876 and daughter Margaret without issue in 1878. The question was whether the gift to Foley was conditioned upon his survival of Margaret, for if it was so conditioned the remainder, being not otherwise disposed of, would revert to the testator's estate. The Court of Appeals refused to imply to Foley's remainder the condition of survivorship that was expressly attached to the remainder to Margaret's children, and held that Foley's estate took the corpus.

The similarity of the dispositions in *Hennessy* v. *Patterson* to those in the instant situation is striking. In both instruments the donor's own issue took only in the event of survivorship. In both instruments there were gifts to nephews not expressly conditioned on survivorship.

In *Wright* v. *Dugan*, 15 Abb. N. C. 107*, *supra*, the testator left personal property in trust for his widow, Mary, for life with remainders, in equal shares, to his sisters, Eleanor and Jane. He further provided (p. 116):

> ". . . .in case either or both my said sisters shall have died before the decease of my said wife, then

*The facts are not fully reported in the official report, 34 Hun 634.

> and in such case the child or children of the one so dying to take and be entitled to the share and portion his, her or their mother would have been entitled to had such mother survived my said wife."

Jane survived the life tenant so there was no question as to her being entitled to one-half the corpus. Eleanor predeceased the life tenant. Eleanor had had five children. One of the five had predeceased both Eleanor and the life tenant, another had survived Eleanor but predeceased the life tenant and the other three had survived both Eleanor and the life tenant. The question was whether the court would imply the same condition of survivorship to the children of Eleanor as was expressed in the gift to Eleanor because, if so implied, the estates of the two children who predeceased the life tenant would take nothing. The court refused to imply the condition and held that the estates of the two children of Eleanor who failed to survive the life tenant took shares of the corpus. The court said (p. 117):

> "We think the intention of the testator that the estate should so vest and take the direction thus indicated was manifest by the provisions of the will, and the construction given by the learned referee is upheld by authority. His construction, to use the language of Andrews, J. in Stevens v. Leslie (70 N. Y. 215), 'prevents the disinheritance of the issue of remainder-men who may happen to die before the termination of the precedent estate, *a consequence which cannot be supposed, in the absence of express words, to have been intended by the testator.*' (Italics supplied)

The case is particularly strong evidence of the unwillingness of the New York courts to imply survivorship conditions.

for one of the children had not only failed to survive the life tenant but had also failed to survive his mother whose estate was expressly conditioned upon survivorship.

A comparatively recent case is *Matter of Schaefer*, 160 Misc. 43, *supra*, where the testator left property in trust for his son Albert for life, remainder to the surviving "children" of Albert; but, if Albert "shall die leaving no lawful issue him surviving", to the testator's four daughters and sons, Amelia, Rose, Edward and George "and the issue of such of them as shall have died * * *, the issue of any deceased child taking by representation the share only which its parent, if living, would have taken". All five children survived the testator but only Rose survived Albert. Amelia and George left issue who survived Albert but Edward left no issue. The question was whether Edward's estate was entitled to a share of the corpus, the argument to the contrary being that inasmuch as survivorship had expressly been made a condition precedent to the enjoyment of the corpus by Albert's issue, it should be implied as a condition precedent to the enjoyment of the corpus by his brothers and sisters or the issue of deceased brothers and sisters. Surrogate Foley held to the contrary, saying (p. 47):

> "The only contingency upon which the alternative gift of the remainder to the named individuals is limited, is the death of Albert without issue. Survivorship to the termination of the trust was not a contingency upon which the gift of the remainder to Edward was limited. The substitutional gift to the issue of the named remaindermen only operates as a divestiture clause as to a remainderman who dies leaving issue. (*Matter of Watson*, 262 N. Y. 284; *Stringer v. Young*, 191 id. 157;

> *Bowditch v. Ayrault*, 138 id. 222; *Staples v. Mead*, 152 App. Div. 745; *Matter of Hunigerford*, 158 Misc. 317; *Matter of Jarvis*, 152 id. 252; *Matter of Leonard*, 143 id. 172.) As Albert never had issue and Edward died without issue, his interest in the remainder was never divested and one-fourth of the principal of the trust is now payable to his estate."

The vitality of the rule against the implication of survivorship conditions is particularly apparent in the decision of Surrogate Foley in *Matter of Schaefer* inasmuch as, if he had found that such a condition was implied, the entire corpus would have gone to the testator's issue *per stirpes*, a result which most testators would presumably desire.

In *Matter of Stephani*, 161 Misc. 803, *supra*, the testatrix left property in trust for her son, Alphonse, for life with remainder on his death to her sister, Marie, "or in case she be then dead to her children share and share alike". Marie predeceased Alphonse without issue. The question was whether the court would imply a condition of survivorship in the gift to Marie, thus preventing her estate from taking the corpus. Surrogate Foley refused to imply such a condition (p. 806):

> "I hold further under the language of the will that the testatrix intended the remainder to vest in Marie Hill, subject to be divested upon her death before the life beneficiary only if she left children her surviving."

The cases which have been analyzed up to this point involve testamentary dispositions. From the footnote on page 6 of his brief in this case and the discussion on page

12 of his brief in the *Spiegel* case,* it would appear that petitioner does not seriously dispute the fact that, if Mr. Church had used the same language in establishing a testamentary trust, a condition of survivorship would not be implied in the gifts to the children of brothers and sisters. Petitioner says the difference in treatment is "apparently based upon the rule that a testator is presumed not to have intended to die intestate as to any portion of his property." (*Spiegel* brief, p. 12).

It is true that New York courts endeavor to avoid testamentary constructions that will result in an intestacy, but petitioner cites no New York case which even intimates that the rule against implying conditions of survivorship arises out of that principle. Moreover, petitioner's explanation is obviously inapplicable to many of the testamentary cases hereinabove analyzed.

In *Matter of Elting, supra;* the issue was not whether there was an intestacy. It was whether, under the language of the will, the testator intended that only such children of his nephew and niece who survived his son Clarence were to take. The nephew's children had predeceased Clarence but the niece's had not. In *Matter of Schaefer, supra*, the question was whether, under the terms of the will, only the issue of the testator who survived the life tenant took the corpus or whether the estate of a child of the testator who predeceased the life tenant without issue was also entitled to share in the corpus. Here again there was no possibility of intestacy regardless of how the issue

*Petitioner advances little argument in his brief in this case, but evidently seeks to incorporate by reference his argument in his brief as respondent in the *Spiegel* case (See Petitioner's brief, pp. 6-7).

was decided, and the result was predicated solely on the refusal to imply a survivorship condition where none was expressed. And in *Wright* v. *Dugan*, *supra*, the court was not faced with an intestacy if its decision went the other way. The only question was whether one-half the corpus should be divided between only three of the nephews and nieces of the testator or whether the estates of two deceased nephews might also share. Petitioner's theory for distinguishing the testamentary cases could not possibly have been the *rationale* of those decisions.

One of the purposes of the New York Revised Statutes of 1830 was to abolish any distinctions between future estates based solely on whether they were created by deed or by will. The Notes of the Original Revisers of the Revised Statutes (Note to 1 R. S. 722, sec. 7) state that their object was "to abolish all technical rules and distinctions having no relation to the essential nature of property * * * and to reduce all expectant estates substantially to the same class, and apply to them the same rules whether created by deed or devise."*

Accordingly when the New York courts were presented with the question of implying a survivorship condition in connection with an *inter vivos* trust they refused to do so. *Matter of Bowers*, 195 App. Div. 548, aff'd 231 N. Y. 613 (1921), *supra*. That case resulted in the application of the same rule against implied survivorships as exists with respect to testamentary trusts. The settlor, by deed *inter*

*Appendix III, p. 1278 of Fowler's *The Real Property Law of the State of New York* (3d Ed., 1909). Fowler's comment, *op. cit.* at p. 52 was "The revisers intended to bring the rules relative to limitations of estates into harmony. * * * they made the new rules about future estates apply to both wills and grants alike. These were immense and comprehensive changes, and fertile of great results in modern law."

vivos, established a trust of personal property, giving a life estate and a general testamentary power of appointment over the corpus to his daughter Mary. In default of appointment the corpus was given to the settlor's children, Martha and William, in equal shares, "the issue of either *then deceased* taking its parent's share by representation, and if one be *then deceased* leaving no issue the survivor to take the whole, and if both be *then deceased*, only one leaving issue, such issue to take the whole" (italics supplied).

The contest was between the executors of the settlor's estate and the Comptroller of the State of New York. The state claimed that the words "then deceased", which clearly expressed survivorship, meant that if the life tenant died without issue neither Martha nor William nor their issue could take unless they survived the life tenant. The state therefore contended that there was a remote possibility of reverter, so that the entire corpus of the trust should be included in the settlor's estate for inheritance tax purposes under the then section 220 of the New York Tax Law which read:*

> "A tax shall be and is hereby imposed upon the transfer of any tangible property within the state and of intangible property, * * *.
>
> * * * * * *
>
> "4. When the transfer is * * * by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor or intended to take effect in possession or enjoyment at or after such death."

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*8 Birdseye, Cumming & Gilbert, *Annotated Consolidated Laws of New York* (2d ed., 1918) 8515-8516.

Both courts held that there was no possibility of reversion and that the trust was therefore not includible in his gross estate. The appellate division said (p. 550):

> "There can be no question that by the terms of the foregoing provision John M. Bowers [the settlor] vested in the trustees the property thereby transferred with no right of reversion in himself."

The result could only have been reached on the theory that the survivorship conditions which were expressed in all other situations would not be implied in the one situation where both Martha and William predeceased the life tenant leaving no issue. A reading of the state's brief in the Court of Appeals makes it perfectly plain that such was the ultimate question before the court. It said in its brief in the Court of Appeals (pp. 5, 10):

> "The result of these sections is that if in Mr. Bowers' lifetime Martha Bowers and William G. Bowers had died leaving no issue, and Mary Coppell had died leaving no issue, and no will, that the trust terminated; the property reverted to the grantor and now passes by the residuary clause of his will.
>
> * * * * * *
>
> "If the deaths took place in the order suggested in the case at bar will not the property revert to Mr. Bowers' estate, and pass under the residuary clause of his will? If so it would seem improper to declare this transfer of the property in these trust deeds free from tax at this time."

and the executors' brief in the Court of Appeals took direct issue, saying (p. 12):

> "It therefore appears very clearly that as to each one of the four trusts, the donor made as absolute a disposition of the fund as it was possible to make."

In *Central Hanover Bank & Trust Company* v. *United States*, 58 F. Supp. 505 (Ct. Cls., 1945), the decedent had created an *inter vivos* trust of personal property, reserving a life estate for herself with remainders to her three children and the survivor or survivors of them, in equal shares, but if any of her three children should predecease her leaving issue him or her surviving, then such issue was to take the share which the parent would have received if living. (see 57 F. Supp. 497, 499). The question was whether survivorship of the settlor-life tenant was an implied condition precedent to the enjoyment of the corpus by the issue of a deceased child, for, if it was, there would clearly have been a reversion if all three children and their issue had predeceased the life tenant. The Court of Claims cited a number of the New York authorities on testamentary trusts and concluded:

> "There may be some doubt that these decisions are equally applicable to remainder interests created by trust, but they may be * * *".

It is submitted that the Court of Claims' recognition of the possibility is completely vindicated by the *Bowers* case, which apparently was not called to its attention. In any event, the Court of Claims gave judgment for the taxpayer.

Nor is *Pennsylvania Co.* v. *United States*, 62 F. Supp. 697 (1945) a repudiation of the Court of Claims' view in the earlier case, as petitioner intimates (*Spiegel* brief, p. 23). In that case the settlor provided an express reversion in one contingency, a general testamentary power of appointment in himself in another.

Petitioner, in his *Spiegel* brief, cites a number of Illinois cases which he claims are in support of his position. It is scarcely necessary to discuss them here for they are of no

value in construing a trust under the laws of New York. The only other authorities which he cites are (Brief, p. 6) Restatement of the Law of Trusts (1935), Sec. 411; *Commissioner* v. *Bayne's Estate*, 155 F. 2d 475 (C. C. A. 2d, 1946); *Newton* v. *Hunt*, 134 App. Div. 325, 334 (1909), and *Doctor* v. *Hughes*, 225 N. Y. 305, 309 (1919). On analysis none of these authorities is even remotely in point.

Section 411 of the Restatement provides:

> "Where the owner of property gratuitously transfers it and properly manifests an intention that the transferee should hold the property in trust but the trust fails, the transferee holds the trust estate upon a resulting trust for the transferor or his estate, unless the transferor properly manifested an intention that no resulting trust should arise or the intended trust fails for illegality."

Section 411 scarcely advances the discussion, for it merely says that if there is not a complete disposition there is a resulting trust in favor of the transferor. The issue in the instant case is whether there is a complete disposition.

In *Commissioner* v. *Bayne's Estate*, 155 F. 2d 475 *supra*, the dispository language made survivorship an express condition precedent to the enjoyment of every gift of the corpus. The taxpayer, in the brief, admitted the existence of a remote possibility of reversion and the court therefore did not have to decide that question. The opinion does not set forth *verbatim* the language of the trust instrument but it can be found in the Tax Court report (4 T. C. M. 145, 146-147). Briefly, the settlor reserved a life estate, with the remainders to such of his issue as might survive him. In default of surviving issue he gave the corpus "in equal parts to the brothers and sister of the

Grantor *him surviving* and the issue *him surviving* of any brother or sister who shall have died before him, * * *." (Italics supplied.)

Doctor v. *Hughes*, 225 N. Y. 305, *supra*, was a case where the settlor placed real property in trust for himself for life with remainder to his "heirs at law". His two daughters were his prospective heirs at law. Judgment creditors of one of the daughters brought an action for an adjudication that they had an interest in the land on the ground that the daughters had remainders which were not subject to divestment. The court held that the words "heirs at law" of the settlor were words of limitation, not words of purchase, and that the settlor had therefore retained the reversion. It is difficult to see in what respect the case assists in the solution of the problem now before this Court, except possibly to demonstrate that a final limitation to the settlor's next of kin would not necessarily have resulted in a complete disposition of the corpus although petitioner, in his regulations promulgated May 1, 1946* (nine days before the second argument of this appeal in the Circuit Court of Appeals) appears to

*Reg. 105, §81.17, as amended May 1, 1946. Example (6) therein contained reads:

> "*Example (6).* The decedent transferred property in trust, reserving a life estate and providing succeeding life estates in his wife and son. Upon the death of the son, the principal was to be paid to the son's wife; if the son's wife did not survive her husband, to the son's issue; and if there were no issue, to the decedent's next of kin. In this case, the decedent has parted with every right or interest in the property and hence requirement (2) is not satisfied. Accordingly, no part of the property is includible in the decedent's gross estate."

Other parts of the section are set forth at pp. 30-32 of petitioner's *Spiegel* brief.

think it would. The language on the page (309) to which petitioner refers merely says, as does section 411 of the Restatement, that if the settlor fails to give everything away there is a resulting trust, a reversion, of what is not given.

The only other New York authority cited by petitioner is *Newton* v. *Hunt*, 134 App. Div. 325, *supra*, which likewise is not in point. The facts were quite involved and, as the court pointed out (p. 328), it is necessary to refer to its earlier decision in *Newton* v. *Jay*, 107 App. Div. 457, to understand them. Eliminating the surplusage, the case was as follows:

The settlor in 1872 placed real and personal property in trust, reserving a life estate and a general power of appointment over the remainder. In 1879, she exercised the power by deed, giving a life estate to her husband, remainder to such of her children as should be living at his death, and to the issue of such of her children as should then have died. However, she expressly reserved a special testamentary power to give the corpus to one or more children or one or more of their issue to the exclusion of others, and a general testamentary power over the corpus if she had no living issue when her life estate and that of her husband terminated.

In 1898 the settlor had four children, three of whom were of age. Her husband had died. As security for a loan she and the three older children mortgaged their interest in the trust, and simultaneously she purported to release her powers of appointment "to the end and intent that the said trust estate shall vest absolutely subject to the life estate of the said Anna Bankard Hunt [the settlor] in her four children in equal shares."

The action was one by an assignee of the mortgagee to enforce payment of the debt out of the trust. The questions were whether the settlor's life estate and the remainders of the three older children could be applied to satisfaction of the debt. The court held that the life income could be so applied in view of the New York rule that one may not create a spendthrift trust for himself. It also held that the three children had effectively mortgaged such interests in the corpus as they might eventually enjoy, but said that the application of the corpus would have to await the death of the settlor because no child or his estate might ever enjoy the corpus since his issue would take a vested remainder if he predeceased his mother.

Petitioner seizes (Brief, p. 6) upon the following language of the opinion as supporting the proposition that there was a possibility of reverter in the instant case (134 App. Div. 334):

> "It appears by the trust indenture of November 18, 1879, that there is a possible interest in reversion in the settlor of the trust, for if all of the children should die during the life of their mother, without leaving lawful issue, the remainder was undisposed of and it would revert to her estate in the absence of a will otherwise disposing of it."

However, the language must be read in the light of the facts to which it applied. As explained, the settlor had expressly reserved a general testamentary power of appointment if her children and their issue predeceased the life tenants. The gifts to all classes of takers were, therefore, expressly conditioned on survivorship. The situation was like those in *Fidelity-Philadelphia Trust Co.* v. *Rothensies*, 324 U. S. 108 (1945), and *Commissioner* v. *Estate of Field*,

324 U. S. 113 (1945), where the settlors expressly reserved powers of appointment on the happening of certain contingencies.

(b) If there be any ambiguity in the instrument the decedent's intent negatives the existence of a reversion.

It is respondent's belief that it is not necessary to go beyond the instrument itself to determine that as a matter of New York law there was never any possibility of reversion to the settlor. However, since petitioner is strongly urging this Court to imply a condition of survivorship of the life tenant in the gifts to the children of deceased brothers and sisters of the settlor, it is entirely proper under the law of New York to look at the circumstances surrounding the creation of the instrument to determine the intent of the settlor in the event that there is an uncertainty as to what he intended by his language. In this connection a leading text writer says (2 Scott on Trusts 828):

> ". . . Where the instrument contains no express provision or where a provision is ambiguous or uncertain in its meaning, resort may be had to extrinsic evidence to determine the terms of the trust. Not only where the trust is created by an instrument *inter vivos* but also where it is created by will, evidence of the circumstances at the time of the execution of the instrument is admissible to determine the intention of the settlor as to matters not expressly and unequivocally covered by the trust instrument. Among the circumstances existing at the time of the execution of the instrument which may be of importance in determining the terms of the trust are the following: the situation of the settlor and of the beneficiaries and of the trustee, such as age, sex, competence, station in life, financial circumstances,

and their relations to each other; the nature and value of the subject matter of the trust; *the purposes for which the trust is created;* the usages of business; the conditions under which the trust is to be administered; the formality or informality, the care or lack of care, with which any instrument containing the manifestation of the settlor's intention is apparently drawn." (italics supplied)

The New York Court of Appeals goes perhaps even farther than Scott would go in admitting extrinsic evidence of intention. In *Matter of Smith*, 254 N. Y. 283 (1930) the court said (p. 289):

> "It is the modern rule that 'with the exception of direct statements of intention, no extrinsic fact relevant to any legitimate question arising in the interpretation of writings and admissible under the general rules of evidence,' can be shut out. (Thayer's Preliminary Treatise on Evidence, 445; Wigmore on Evidence, vol. 5, § 2470; *Matter of Neil*, 238 N. Y. 138; *Dobbins* v. *Pratt Chuck Co.*, 242 N. Y. 106.) Sometimes the rule has been stated with the proviso that extrinsic facts may be shown in cases only where the language alone is of doubtful import. (*Morris* v. *Sickly*, 133 N. Y. 456.) We take this to mean merely that the probable intention of the writer, as indicated by extrinsic facts, may not prevail over the plain meaning of the written word, nor have any force whatever, unless the words incorporated in the writing are susceptible of a meaning which expresses the intent thus disclosed. It has been said by Professor Wigmore: 'The truth had finally to be recognized that words always need interpretation; that the process of interpretation inherently and invariably means the ascertainment of the association between words and external ob-

> jects; and that this makes inevitable a free resort to extrinsic matters for applying and enforcing the document." (Wigmore on Evidence, § 2470, subd. 3.) The process of interpreting a legal document has been defined as follows: 'to interpret a legal writing is, therefore, first to collect the intent, to discover the writer's meaning; secondly, to ascertain that that meaning is expressed sufficiently.' (On the Principles of Legal Interpretation by F. Vaughan Hawkins, Esq., see Appendix C to Thayer's Treatise, p. 581.)"

In *Bruff* v. *Rochester Trust & Safe Deposit Co.*, 218 App. Div. 67 (1926), the New York Appellate Division said, in the course of construing an *inter vivos* trust instrument (p. 69):

> "A majority [of the court] however, are of the opinion that if the instrument does not clearly provide that Adelia was the owner of the legal title to the income, there is at least an ambiguity in the trust agreement in this respect. Assuming such ambiguity to exist, it is permissible to examine into the surrounding circumstances to determine what was in the mind of the donor at the time she entered into the trust agreement."

And in *McArthur* v. *Gordon*, 126 N. Y. 597 (1891), the court referred to extrinsic evidence surrounding the execution of the instrument creating the trust to determine the intent of its creator (p. 611).

In the instant case the uncontradicted evidence showed, and the Tax Court found, that at the time of creation of the trust the decedent had but recently attained his twenty-first birthday and come into possession of his property, consisting principally of 1,000 shares of stock of Church and Dwight Company, a corporation closely held by the Church

and Dwight families (R. 8). It came to the attention of E. Dwight Church, an older brother of the decedent, that decedent was leading a riotous existence, drinking heavily, squandering his money, and associating with companions of questionable repute (R. 8). Fearful that decedent as a result of his improvidence might dispose of the shares of Church and Dwight stock to persons outside the family circle, E. Dwight Church suggested to decedent that he place the stock in trust in order to safeguard it (R. 8). Decedent cared so little about the stock that he offered at once to give it to his older brother, but the offer was refused and the stock was placed in trust (R. 4). Decedent told the family attorney that he wanted to put the stock in trust to avoid the possibility of his dissipating it (pp. 33-34, typewritten transcript).

In the face of such uncontroverted evidence that the decedent had no personal interest in retaining the stock and that it was only on the insistence of his brother that he retained even a life estate, it is perfectly clear that he never intended to retain an interest in the corpus. In fact the retention of such an interest would have defeated what the Tax Court found to be the decedent's primary motive for placing the stock in trust, namely, to keep him from being able to dispose of it to persons outside the Church and Dwight families. Had he retained a reversion there would still have been the possibility of eventually defeating the primary purpose, and that was clearly not the intent either of the settlor or of his brother who instigated the trust arrangement. Consequently, if there be any doubt as to the proper construction of the instrument, the intent of the settlor resolves that doubt in favor of a construction that negatives any possibility of a reversion.

The retention of the life estate was, of course, not the purpose, but a mere incident of the prime motive, for decedent could not protect *himself* by creating a life estate inasmuch as his life estate was freely assignable and attachable under the well established New York rule that one may not create a spendthrift trust for himself. *Schenck* v. *Barnes*, 156 N. Y. 316 (1898); *Kene* v. *Hill*, 102 App. Div. 370 (1905). Presumably the attorney who drew the instrument, a practicing attorney of twenty-five years' experience (typewritten transcript, pp. 32-33), knew this.

POINT 2

EVEN IF THERE HAD BEEN A REMOTE POSSIBILITY OF REVERSION, THE EXISTENCE OF SUCH A POSSIBILITY WOULD NOT HAVE MADE THE TRANSFER ONE TO TAKE EFFECT IN POSSESSION OR ENJOYMENT AT OR AFTER DEATH WITHIN THE MEANING OF THE STATUTE.

This point becomes material by assuming, but for the purpose of argument only, that there is a possibility of reversion even though remote,—in other words, by assuming that if decedent had died without issue, without surviving brothers and sisters and without surviving children of brothers and sisters the corpus of the trust would have reverted to his estate.

At the time of decedent's death the corpus of the trust was worth $188,800 (p. 2 of statement attached to ninety-day letter in typewritten transcript). There were sixteen people, ten younger than decedent, who were at that time in direct line to take (R. 3, 14). Actuarially computed, the chance that the corpus would revert to decedent or to his estate because all sixteen might predecease decedent was

worth less than three ten-thousandths of one cent ($.000003-) (R. 12-13).

It has been said many times that taxation is a practical matter. *Farmers Loan & Trust Co.* v. *Minnesota*, 280 U. S. 204, 212 (1930); *Tyler* v. *United States*, 281 U. S. 497, 503 (1930); *Helvering* v. *Hallock*, 309 U. S. 106, 114 (1940); *Harrison* v. *Schaffner*, 312 U. S. 579, 582 (1941). The Court will recall that on many occasions that principle has been relied upon here by petitioner, both in his briefs and in oral argument. However, he is now urging in effect that a possibility so remote that even an actuary would not value it at as much as half a cent is sufficient to create a tax liability. Evidently the practical is to yield to the absurd when the goal is a tax.

The principle of *de minimis* has received the approval of this Court. *Maish* v. *Arizona*, 164 U. S. 599, 602 (1896); *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601, 607 (1939). It has frequently been applied in the lower federal courts. *F. A. D. Andrea, Inc.* v. *Dodge*, 15 F. 2d 1003, 1005 (C. C. A. 3d, 1926); *Robeson* v. *United States*, 123 F. 2d 991, 993 (C. C. A. 10th, 1941); *Lumaghi Coal Co.* v. *Helvering*, 124 F. 2d 645, 648 (C. C. A. 8th, 1942); *In re United Light & Power Co.*, 51 F. Supp. 217, 225 (Del., 1943); *Porter* v. *Rushing*, 65 F. Supp. 759 (W. Ark., 1946). In fact petitioner himself recognizes the principle in Section 29.56-3 of Income Tax Regulations 111 where he says that in the payment of income taxes a fractional part of a cent, if less than half a cent, may be disregarded. The reason is obvious. He is not giving away anything that belongs to the Treasury. There is nothing to give away.

This case is not like *Fidelity-Philadelphia Trust Co.* v. *Rothensies*, 324 U. S. 108, *supra*, or *Commissioner* v. *Estate*

of Field, 324 U. S. 113; *supra*, because there the reversion (expressed as contingent general powers of appointment) had real value. In the first case the actuarial value of the reversion was said to be substantial although the reports do not give the exact amount. In the second, the reversion was worth $24,931 and the corpus $157,453, so that the value of the reversion was approximately 16% of the value of the corpus. It is not like *Estate of Edson Bradley*, 9 T. C. No. 20 (1947), where, in the first of the trusts, the taxpayer conceded that the interest retained by the decedent was worth $325,952, or nearly forty percent of the value of the corpus. Three ten-thousandths of a cent is an amount the equivalent of which could not change hands anywhere in the world except perhaps in fantastically depreciated Chinese currency. Congress could scarcely have meant to impose a tax because of the existence of a theoretical reversion which has no value except to a dialectic gymnast.

The statute says "*intended* to take effect in possession or enjoyment at or after death" (italics supplied). Petitioner urges that Congress did not intend that every gift in which the donor had unconsciously retained a reversion of some value should escape the tax merely because the donor did not mentally intend such a reservation or did not know it existed. While this may be true, yet there must be some point at which the word "intended" is to be given a meaning; otherwise it would be pure surplusage. It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word of the statute. *Platt* v. *Union Pacific R. R.*, 99 U. S. 48, 58-59 (1878); *Market Company* v. *Hoffman*, 101 U. S. 112, 115-116 (1879); *United States* v. *Lexington Mill & Elevator Co.*,

232 U. S. 399, 410 (1914); *McDonald* v. *Thompson*, 305 U. S. 263, 266 (1938).* It is not respondent's purpose to indicate the precise point at which the line should be drawn. It is respondent's position, however, that where the theoretical reversion has no value at all in the minds of any sane person, there is clearly no intent, even from a strictly legalistic point of view, to create a reversion and no practical possibility that such a reversion would ever vest in possession and enjoyment. It is only the practical possibility of possession and enjoyment of the corpus which should, under a reasonable interpretation of the statute, be the occasion for the incidence of a tax.

But it may be argued that if the courts are not to have a hard and fast rule such as that for which petitioner contends there is no touchstone* by which each case may be decided—that the lower courts will never know, until this Court has spoken, whether they have placed a decision on the correct side of the dividing line. But certainty is frequently impossible in the application of legal standards. Sometimes it is not even desirable. Nevertheless, the courts have not, for that reason, abdicated their functions in such cases. Courts and juries are continually determining what is reasonable, what is negligent, what is probable,—by the standards of the ordinary man. Is it then so impractical, so disruptive of the processes of tax administration, to permit them to determine whether a theoretical possibility of reversion is so remote and so improbable of enjoyment that the donor must never have intended it? To refuse to permit them to do so is to nullify the express language,

*"Common understanding and experience are the touchstones for the interpretation of the revenue laws." *Helvering* v. *Horst*, 311 U. S. 112, 118 (1940).

of the statute and to interpret it as if the word "intended" were not there.

Moreover, the adoption of a rule of reason in situations like the one here presented is more feasible than in most other instances, for the vast majority of these cases come before a single tribunal—the Tax Court—and the adoption of uniform workable standards is therefore made easier. The Tax Court has had no difficulty with the problem here presented. It has interpreted the statute, in the absence of an expressed intent on the part of the settlor through the use of such a device as an express reservation of a power of appointment, as meaning such a possibility as in the minds of ordinary human beings has some chance of becoming a reality. *Frances Biddle Trust*, 3 T. C. 832, 843 (1944); *Estate of Nettie Friedman*, 8 T. C. 68, 71 (1947). Thus in many cases where the reversion had a small theoretical value which could be translated into terms of exchangeable money the Tax Court has nevertheless deemed the possibility to be so remote as to be beyond the realm of human probability and therefore never intended. See, for example, *Frances Biddle Trust, supra*; *Estate of Harris Fahnestock*, 4 T. C. 1096 (1945); *Estate of Mary B. Hunnewell*, 4 T. C. 1128 (1945); *Estate of Edward P. Hughes*, 7 T. C. 1348 (1946). In other cases where the reversion has been such as to make the possibility of vesting in enjoyment within the comprehension of an ordinary man the Tax Court has resolved the question in favor of the petitioner. *Estate of Thomas P. Leaman*, 5 T. C. 699 (1945); *Estate of John C. Duncan*, 6 T. C. 84 (1946); *Estate of Edson Bradley*, 9 T. C. No. 20 (1947), *supra* (second trust). This is as it should be. It is a procedure which appeals to common sense and is undoubtedly what

Congress would have approved if its members had thought the problem through to that point.

The rule of reasonable intent is not one that appeals only to the Tax Court. The Circuit Court of Appeals for the Second Circuit has recently applied it to a case under section 811(c). *Commissioner* v. *Singer's Estate*, 161 F. 2d. 15 (1947). There the decedent had created two *inter vivos* trusts. In the first he gave successive life estates to his wife Blanche and to himself, with a special power of appointment over the remainder, exercisable by him and Blanche by deed, to his children and their issue. In default of appointment the remainder was given to his children at specified times. There were other limitations over in case these dispositions did not take effect. Subsequently the decedent and Blanche, by deed, irrevocably appointed their three children to receive the principal in equal shares after their deaths, the issue of any deceased child to take the child's share.

The second trust was the same as the first except that Blanche was not given a life estate and the special power of appointment was exercisable by the settlor alone. The decedent married again and exercised the power in the second trust by irrevocably appointing the children of his two marriages to receive the corpus, the issue of any deceased child to take his parent's share, the principal to be so divided as to equalize the amounts received by each child under the two trusts and a third trust not here material. Subsequently the decedent married a third time.

The decedent was survived by three children and one grandchild as issue of the first marriage and two children and two grandchildren as issue of the second,—a total of seven in direct line to take as compared with sixteen in the

instant case. The trust was to be construed under the laws of England and it appeared that if the issue of the first marriage had predeceased the settlor the special power of appointment under the first trust would not have been exhausted because the decedent could then have exercised it again by appointing among children of subsequent marriages. Similarly, with respect to the second trust the power of appointment would not have been exhausted if the issue of both the first and second marriages had predeceased him.

The court held that if the existence of special powers potentially unexhausted at the time of a decedent's death could ever make the corpus includible in his gross estate the statute was not intended to apply to a case where the possibility of the right further to exercise the powers was so remote and improbable. On this phase of the case the court was critical of petitioner's extreme interpretation, saying (pp. 18-19):

> "It appears generally true that now an objective and economic, rather than a subjective, standard of intent, is envisaged. Paul, Federal Estate and Gift Taxation, 1946 Supp., 179; but, even so, a remote power which will actually be exercised only by substitutionary deed in the event of a convulsion engulfing all the several living children and grandchildren —an event obviously not within the decedent's natural contemplation—seems far from the type of disposition at which the statute is directed. Of course the matter is not free from doubt; the Supreme Court may feel that the logic of positions already taken requires it to go so far. But on the basis of the precedents to date, we do not believe that result is foreshadowed."

But even if this Court considers that the logic of positions already taken requires a rule that a reversion which has any value at all is sufficient to create tax liability under the statute, less than three ten-thousandths of one cent is certainly not value. The reversion is valueless. The decedent has not retained the possession or enjoyment, or the possibility of possession or enjoyment, of the corpus and the disposition should be considered to be, as it is in fact, complete.

POINT 3

THE CIRCUIT COURT OF APPEALS CORRECTLY APPLIED THE PRINCIPLE OF *DOBSON* v. *COMMISSIONER* AND RELATED CASES.

Under the statute the appellate courts may modify or reverse a determination of the Tax Court only if it is "not in accordance with law". Internal Revenue Code § 1141 (c)(1), 26 U. S. C. § 1141(c)(1); *Wilmington Trust Co.* v. *Helvering*, 316 U. S. 164, 168 (1942); *Dobson* v. *Commissioner*, 320 U. S. 489, 494 (1943); *John Kelley Co.* v. *Commissioner*, 326 U. S. 521, 526-527 (1946). The court below, saying that it was unable to identify "a clear-cut mistake of law" in the Tax Court's decision (R. 18), affirmed without deciding whether a reversion existed or whether, if it existed, the corpus of the trust was includible in the decedent's gross estate. However, it must necessarily have given thought to one or both of those problems because they were the grounds on which petitioner there sought a reversal. At the very least, therefore, the Circuit Court of Appeals must have considered petitioner's propositions of

law to be of dubious validity. Petitioner offers no new argument here and his brief here contains no New York authorities which were not in his brief below.

If it is not possible to identify a clear-cut mistake of law in the Tax Court's decision, the Court of Appeals had no alternative but to affirm. In *Dobson* v. *Commissioner*, *supra*, this Court said (p. 502):

> "... when the court cannot separate the elements of a decision so as to identify a clear-cut mistake of law, the decision of the Tax Court must stand. * * * In deciding law questions courts may properly attach weight to the decision of points of law by an administrative body having special competence to deal with the subject matter. The Tax Court is informed by experience and kept current with tax evolution and needs by the volume and variety of its work. While its decisions may not be binding precedents for courts dealing with similar problems, uniform administration would be promoted by conforming to them where possible."

In *Commissioner* v. *Scottish American Investment Co.*, 323 U. S. 119 (1944), the Court said (p. 123):

> "There is no charge here that the Tax Court failed to follow the applicable statutes or regulations. No clear cut mistake of law is alleged."

The principle was concisely stated in the concurring opinion of Mr. Justice Frankfurter in *Trust of Bingham* v. *Commissioner*, 325 U. S. 365 (1945), where he said (p. 379):

> "Accordingly, the vital guidance of the *Dobson* opinion was that a decision of the Tax Court should stand unless it involves 'a clear-cut mistake of law.'"

In Point 1 of this brief respondent believes it has demonstrated that the courts of New York would interpret the deed of trust as a complete disposition of the corpus without a reversion. Petitioner has cited no New York authority to the contrary. Nothing in his brief would lead to the conclusion that the Tax Court made a clear-cut mistake of law when it held that the decedent had disposed of his interest in the corpus as well as any man could. In fact, there is no authority in petitioner's brief which, standing alone, would even lead to the belief that *possibly* the instrument created a reversion.

In Point 2 respondent has shown that the reversion, if any, had no value. If it had no value, it was as if it did not exist. If the Tax Court has applied a realistic interpretation of the statute it has not thereby committed any clear-cut mistake of law, for any other interpretation would violate the recognized principle that every word of a statute is to be accorded some meaning when it is possible to do so.

CONCLUSION

THE JUDGMENT OF THE COURT BELOW SHOULD BE AFFIRMED.

Respectfully submitted,

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New York, New York.
October 16, 1947.

APPENDIX

New York Real Property Law

Sec. 40. **When future estates are vested; when contingent.** A future estate is either vested or contingent. It is vested, when there is a person in being, who would have an immediate right to the possession of the property on the determination of all the intermediate or precedent estates. It is contingent while the person to whom or the event on which it is limited to take effect remains uncertain.

Sec. 59. **Qualities of expectant estates.** An expectant estate is descendible, devisable and alienable, in the same manner as an estate in possession.

New York Personal Property Law

Sec. 11. **Suspension of ownership.** The absolute ownership of personal property shall not be suspended by any limitation or condition, for a longer period than during the continuance and until the termination of not more than two lives in being at the date of the instrument containing such limitation or condition, or, if such instrument be a last will and testament, for not more than two lives in being at the death of the testator; except that a contingent gift in remainder may be made on a prior gift in remainder, to take effect in the event that the persons to whom the first remainder is limited die under the age of twenty-one years, or on any other contingency by which the interest of such persons may be determined before they attain full age. For the purposes of this section, a minority is deemed a part of a life, and not an absolute term equal to the possible duration of such minority. Lives in being or a minority in being shall include a child begotten before the creation of the estate but born thereafter. In other respects limitations of future or contingent interests in personal property are subject to the rules prescribed in relation to future estates in real property.